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NOT TO BE PUBLISHED IN OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION TWO

In re the Marriage of GEORGE ROBINSON and RACHEL LOPEZ.	
GEORGE ROBINSON, Appellant, v. RACHEL LOPEZ, Respondent.	E069923 (Super.Ct.No. HED007428) OPINION

APPEAL from the Superior Court of Riverside County. Bradley O. Snell, Temporary Judge. (Pursuant to Cal. Const., art. VI, § 21.) Affirmed.

George Robinson, in pro. per., for Appellant.

No appearance for Respondent.

The family court entered a judgment of dissolution for the marriage of appellant George Robinson (Husband) and respondent Rachel Lopez (Wife). The family court found there were no community property assets. The family court did not award

spousal support. (Fam. Code, § 4320.)[1] Husband contends the family court erred by (1) not ordering Wife to pay spousal support to Husband; and (2) finding the assets at issue were Wife's separate property. We affirm the judgment.

FACTUAL AND PROCEDURAL HISTORY

Prior to the marriage, from 1998 to 2001, Husband grossed approximately $12,000 a month and netted approximately $9,000 a month. Husband worked as the "head of promotions and marketing" for a "multimillion-dollar record company called Langley Records." Husband had five girlfriends in Los Angeles. The five girlfriends paid the rent on their homes, and Husband paid the utilities at the five homes. Husband did not have his own home; he stayed at his five girlfriends' homes. Husband did not save any of his salary; he spent his money on utilities, motorcycles, cars, and clothing.

Husband and Wife met on December 31, 2000. Wife was receiving $24,000 a month due to her membership in the Morongo Indian tribe. Wife offered to support Husband if he moved to the Morongo Indian reservation. Husband was tired of his life in Los Angeles, so he quit his job and moved to the Morongo Indian reservation in February 2001. Husband brought his motorcycle and $20,000 worth of clothing with him.

In July 2002, Wife purchased unimproved real property (the property) in Banning, on the Morongo Indian reservation. Wife took title to the property solely in her name. Husband asserted his name was not placed on the title because Wife was a

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[1] All subsequent statutory references will be to the Family Code unless otherwise indicated.

member of the Morongo Indian tribe. Husband explained that Wife's status as a tribal member meant that (1) if the property were solely in Wife's name, then property taxes would not have to be paid on the property; and (2) if the property were solely in Wife's name, then water rights would be easily granted for the property. In August 2003, Husband sold his motorcycle for $13,000. Husband gave the $13,000 to Wife in order to pay for blueprints for a house to be constructed on the property.

Husband and Wife married on September 11, 2003. On September 25, 2003, Wife petitioned for dissolution of the marriage. On November 3, 2003, Wife filed an order to show cause re: annulment. Wife sought an annulment on the basis that Husband's sole reason for marrying Wife was to prevent her from testifying against him in a domestic violence case in which Wife was the victim. In January 2004, the family court granted the annulment. The family court listed the date of separation as September 21, 2003. Wife attempted to file a judgment of annulment, but it was rejected because proofs of service for various documents in the case had not been filed.

In April 2005, Husband pled guilty in the domestic violence case in which Wife was the victim. That criminal case involved allegations of domestic violence occurring in November 2003. The criminal trial court sentenced Husband to prison for a term of six years. Husband was incarcerated for three years three months, from 2004 through June 2007.[2] From 2004 (after Husband was incarcerated) to January 2006, Wife had a

[2] Husband asserted he was on bail, then in jail, and then back on bail before entering his guilty plea in 2005. While the math would indicate Husband was incarcerated in March 2004, it is not explicitly set forth in the record when Husband's incarceration began in 2004.

house built on her unimproved property (the house). Wife obtained $550,000 in construction loans solely in her name for the purpose of building the house.

Husband alleged that, while he was incarcerated, Wife sent him approximately $7,000 and spent $260,000 on telephone calls with Husband. Wife explained that she sent money and paid for telephone calls because Husband made her feel responsible for him being incarcerated. Wife visited Husband in prison, but also dated other men. Upon Husband's release from prison, he dated another woman (Girlfriend).

In July 2007, Wife fired a gun at Girlfriend. As a result, Wife was incarcerated for approximately 150 days. Wife was released in approximately December 2008. Wife's income decreased from $24,000 per month to $14,000 per month. While incarcerated, Wife was unable to pay her house loan. Upon being released, Wife sought a modification for the house loan.

In October 2007, Husband was incarcerated for a separate felony firearm case. Husband was sentenced to prison for a term of five years. Upon Wife's December 2008 release, she resumed communicating with Husband. Due to Wife's probation terms, she could not visit Husband in prison; however, Wife sent Husband money.

Husband was released from prison in July 2011. Husband and Wife began residing together in July or October 2011. In February 2012, Husband "started a bedsheet company" with Wife's help. In July 2012, Husband accused Wife of committing adultery and left the house. In November 2012, Wife filed for bankruptcy. In 2014, Husband's bedsheet company took "a nose dive," and he began working for a moving company earning $20 per hour.

In March 2014, Husband responded to Wife's 2003 petition for dissolution. In May 2014, the family court set aside the 2004 annulment order, struck Wife's 2003 petition, and deemed Husband's 2014 response to be the petition. Husband requested the legal date of separation be changed from September 21, 2003, to March 2013. Wife requested the family court grant an annulment. The family court held an evidentiary hearing to determine the date of separation and whether the annulment should be granted. The family court denied Wife's request for an annulment and set the date of separation as July 12, 2012.[3] In September 2016, Husband suffered a stroke and ceased working for the moving company.

In October 2017, the family court held an evidentiary hearing on Husband's request for spousal support and the division of community property assets. The assets at issue included the house and vehicles. The family court found the house was Wife's separate property because (1) Wife purchased the property solely in her name; (2) Wife purchased the property before the marriage; (3) Wife obtained $550,000 in construction loans solely in her name; (4) the house was constructed during the marriage, but while Husband was in prison; and (5) the only money Husband contributed to the house was $13,000 prior to the marriage.

Wife had a 2003 Ford truck in her name, which was purchased in 2002—before the marriage—and sold in 2005. The family court found the 2003 truck was Wife's

[3] Husband asserts the trial court found the date of separation to be July 20, 2012. Husband does not provide a record citation to support his assertion that the separation date was July 20, 2012. We rely upon a minute order in the register of actions, which reflects the separation date was July 12, 2012.

separate property because it was purchased before the marriage and the title was solely in Wife's name. Wife had a Cadillac CTS, which was purchased before the marriage. The family court explained that the Cadillac was Wife's separate property because it was purchased prior to the marriage. In 2005, Wife traded in the Cadillac CTS for a 2006 Cadillac STS. The Cadillac STS was repossessed. Wife had two watercraft, one of which she purchased before the marriage and one that she purchased during the marriage for $1,000. Wife gave the two watercraft to her niece after they were mechanically broken. The family court found the one watercraft, purchased before the marriage, was Wife's separate property.

In May 2004, after Husband was incarcerated, Wife purchased a 2004 Ford truck. The title to the truck was held solely in Wife's name. Wife still owned the truck. The truck was worth $13,000 in 2017. Wife purchased a 2012 Hyundai Elantra in March 2012 as a graduation present for her daughter. Wife's daughter continued to drive the Hyundai. Wife purchased a Yamaha Raptor in 2004. Wife gave the Raptor to her nephew in 2015 after it was mechanically broken. Wife estimated the Raptor was worth $600. Husband estimated the Raptor was worth $2,000 to $2,500 in July 2012 because it was operational at that time.

Husband asserted $100,000 was spent on appliances and furniture for the house. Husband believed the items would be worth $25,000 to $30,000 if resold. Wife said the appliances were "all breaking down." For example, the oven and garbage disposal were broken.

In switching to take evidence on the issue of spousal support, the family court said, "[T]here were significant periods of time when you were not together. So it's not in the traditional sense of being a nine-and-a-half-year marriage where the parties stay under the same roof and they're together for nine years. They rely upon one another. They do things together. For your entire marriage you guys only lived together for about a year, all told, between 2003 and 2011 to 2012. So you've got about a year period of time where you guys were actually residing together under the same roof."

When Husband lived with Wife for the second half of 2011 into 2012, Wife was grossing $18,000 per month and netting $14,000 per month as a tribal member. Husband's and Wife's bills were approximately $10,000 per month. Every month the balance in the checking account went down to approximately $500. Husband drove all of Wife's vehicles, but typically drove the 2004 Ford truck. Husband and Wife went to restaurants "a lot" and went to the beach "a lot." Husband and Wife took a trip to Las Vegas and trips to Pechanga Casino. Husband had Wife's bank card and used it "any time [he] wanted to."

Husband and Wife's separation date was in July 2012, and the evidentiary hearing was in October 2017. The family court asked what Husband had done in the past five years to become self-supporting. Husband was not employed. Husband said his felony record and the stroke he suffered in September 2016 prevented him from being employed. Husband was working toward obtaining his GED and was appealing the denial of his application for disability benefits. In 2017, Husband was supported by Girlfriend. The family court asked why Husband needed spousal support from Wife if

Girlfriend was supporting Husband. Husband responded, "Because at the time when me and my wife split up, I didn't know about the law."

The family court found Husband and Wife's standard of living was artificially high, in that they were spending all the money Wife received every month, not saving any money, and Wife declared bankruptcy. The family court found that, prior to the marriage, Husband's standard of living "was comparable if not better" to the marital standard of living. The family court found Husband had the ability to support himself. The family court said, "You had the stroke, and that has somewhat limited you and your ability. But you definitely show mentally that, you know, you're with it and you're able to articulate your discussions and prepare your case, and I believe you're capable of employment."

The family court found Husband did not surrender his career for the marriage. The family court explained that "[Husband] saw an opportunity with [Wife], who [was] making $24,000 a month, who could make [Husband's] complicated life running around L.A. a lot easier out here." The family court found that the marriage did not jeopardize Husband's ability to support himself because Husband was incarcerated for eight of the nine years of marriage. The family court explained that it was Husband's criminal record—not the marriage—that was preventing him from finding employment.

The family court noted that Wife was 47 years old and Husband was 42 years old. The family court also took note of Husband's conviction for domestic violence against Wife. The family court found Husband was cohabitating with Girlfriend, who earned $4,000 per month.

The family court concluded, "[D]uring the course of the marriage, the nine-plus years . . . that the marriage existed, there was only a one-year period of time that there was really—where he was in [Wife's] care, under [Wife's] roof, and [Wife was] providing for him. And that was back in 2011. That was six years ago. [¶] Based upon all of those factors . . . there is no basis whatsoever to grant spousal support. All right. So it's clear that spousal support is not warranted in this case. You are supported by a significant other, so you can't rebut that presumption. It's been five years since you've been separated, and now you're seeking it, and it was only a one-year period of time. So there really is no justification for any spousal support order."

The family court continued, "With regards to the property that you argued about, based upon kind of all the issues that I've indicated, all the property that ever was purchased—a lot of it was during the marriage—well, before the marriage, but there was [*sic*] some things that were purchased during the marriage. They were all purchased by [Wife], were in [Wife's] name, even though [Husband] was able to use the vehicle. On these facts that I've basically announced and put on the record, it was basically you were a part of her life and using her things. And so I don't find that that rises to the level of ownership.

"So I find that even though you were driving the truck for a significant period of time and that it was purchased by [Wife] during the technical course of the marriage, it was purchased while you were in prison with her own money and she let you use it for the period that you were together. [¶] In essence, you know, back whenever you guys got together, that you saw an opportunity that here is this woman that has a ton of

money. And it just seems to this court that you were going to use her because of who she was and what she had. And you're here trying to seek your rights because of the marriage. But this is not one of those cases that there are, you know, any justifiable community assets that you have an interest in because, again, of all the time you didn't spend together."

The family court entered a judgment for dissolution of Husband's and Wife's marriage. The family court did not award spousal support. The family court found there was no community property.

DISCUSSION

A. SPOUSAL SUPPORT

Husband contends the family court erred by denying his request for spousal support.

Section 4320 sets forth a lengthy list of factors the family court must consider when deciding whether to order spousal support. " ' "In making its spousal support order, the trial court possesses broad discretion so as to fairly exercise the weighing process contemplated by section 4320, with the goal of accomplishing substantial justice for the parties in the case before it." [Citation.] In balancing the applicable statutory factors, the trial court has discretion to determine the appropriate weight to accord to each. [Citation.] But the "court may not be arbitrary; it must exercise its discretion along legal lines, taking into consideration the applicable circumstances of the parties set forth in [the statute], especially reasonable needs and their financial abilities." ' " (*In re Marriage of Nelson* (2006) 139 Cal.App.4th 1546, 1559.) We

apply the abuse of discretion standard of review. (*In re Marriage of Kerr* (1999) 77 Cal.App.4th 87, 93.)

The first factor is "[t]he extent to which the earning capacity of each party is sufficient to maintain the standard of living established during the marriage, taking into account all of the following: [¶] (1) The marketable skills of the supported party; the job market for those skills; the time and expenses required for the supported party to acquire the appropriate education or training to develop those skills; and the possible need for retraining or education to acquire other, more marketable skills or employment. [¶] (2) the extent to which the supported party's present or future earning capacity is impaired by periods of unemployment that were incurred during the marriage to permit the supported party to devote time to domestic duties." (§ 4320, subd. (a).)

The family court found that Husband's earning capacity prior to the marriage provided him a comparable, if not better, standard of living than the marital standard of living, especially in light of the marital standard of living being artificially high. The family court said, "I think [Husband] do[es] have the capacity to sufficiently maintain a standard of living that existed during the marriage and [it] should be similar." The family court explained that Husband was capable of earning a living, as demonstrated by Husband's ability to present his case in court. (§ 4320, subd. (a).) The family court found Husband's incarceration, rather than the marriage, impaired Husband's possible earning capacity. (§ 4320, subd. (a)(2).) Thus, the record reflects the family court considered the first factor and the evidence relevant to that factor.

The second factor in section 4320 is "[t]he extent to which the supported party contributed to the attainment of an education, training, a career position, or a license by the supporting the party." (§ 4320, subd. (b).) The family court said, "I don't find that [Husband] supported or contributed to [Wife's] obtaining any kind of career or training or education." The family court's finding was supported by Wife's testimony that she had not worked since sometime before 2001. Accordingly, the record reflects the family court considered the second factor and the evidence relevant to that factor.

The third factor in section 4320 is "[t]he ability of the supporting party to pay spousal support, taking into account the supporting party's earning capacity, earned and unearned income, assets, and standard of living." (§ 4320, subd. (c).) The family court said, "Clearly, [Wife] has the ability to pay support based upon her tribal money that she gets every year. So she has significantly more income and assets than [Husband does] at this time. She's also got the obligations that we've talked about. The house obligation is entirely her obligation. The loan amount is over half a million dollars and is in her name. And she's responsible for that as well as any other debt." The family court's comments reflect that it considered the third factor and evidence relevant to that factor.

The fourth factor in section 4320 is "[t]he needs of each party based on the standard of living established during the marriage." (§ 4320, subd. (d).) In regard to the marital standard of living, the family court found it was not sustainable because it was artificially high, as demonstrated by Wife's loan modification to avoid foreclosure and her bankruptcy. The family court found Husband was supported by Girlfriend and that

his needs were being met via her income. The family court said, "And, at this point, [Husband] is not employed. However, he is currently and has been for the last four or five years living with [Girlfriend]. He's indicated she makes about $4,000 a month." The family court's comments reflect it considered the marital standard of living and Husband's needs, as well as the evidence relevant to those issues.

The fifth factor in section 4320 is "[t]he obligations and assets, including the separate property, of each party." (§ 4320, subd. (e).) The family court found that Wife owned the house as separate property, but that she also owed over $500,000 for the house. In regard to the vehicles, the family court said, "You bought vehicles brand-new and [then] destroyed [the] vehicles." The family court's comments reflect Wife's separate property did not have a great deal of value because (1) the house was security for a large loan, and (2) the vehicles were not maintained. Thus, the record reflects the family court considered the obligations and assets and the evidence relevant to those issues.

The sixth factor in section 4320 is "[t]he duration of the marriage." (§ 4320, subd. (f).) The family court said, "So the duration of the marriage that we've talked about is a nine-year marriage. However, this is a very unique nine-year marriage because you didn't reside under the same roof but for the fact of maybe a year. And for an extended period of time [Husband] was either in prison or with another woman, [Girlfriend]. So that's a factor that the court does consider." The family court's comment reflects it considered the duration of the marriage and the evidence relevant to that factor.

The seventh factor in section 4320 is "[t]he ability of the supported party to engage in gainful employment without unduly interfering with the interests of dependent children in the custody of the party." (§ 4320, subd. (g).) The family court said, "There were no children of the marriage, so that's not a factor that the court considers." The family court's comment reflects that it considered the issue of children and found that, because there were no children in this case, the factor would not be given any weight.

The eighth factor in section 4320 is "[t]he age and health of the parties." (§ 4320, subd. (h).) The family court noted that Wife was 47 years old and Husband was 42 years old. In regard to health, the family court said, "[Husband] is indicating that his health is a deterrent to his employability, and he is unable to employ himself because of the stroke. However, based upon my interaction with [Husband] over the last year, [Husband is] capable of employment." The family court's comments reflect it considered the parties' ages and Husband's health.

The ninth factor in section 4320 is "[d]ocumented evidence . . . of any history of domestic violence, as defined in Section 6211, between the parties . . . ." (Former § 4320, subd. (i) [eff. Jan. 2016].) The family court said, "Again, as indicated, there's a history of domestic violence. [Husband] was convicted of an act of domestic violence, a [Penal Code section] 245, against [Wife]. I know he disputes the conviction. However, it stands as a conviction. And he did serve prison time for that conviction. So that's another factor of the 4320 that applies in this case." The family court's

comments reflect it considered the domestic violence factor as well as the disputed evidence concerning that factor.

The tenth factor in section 4320 is "[t]he immediate and specific tax consequence to each party." (§ 4320, subd. (j).) The family court said, "The tax consequences of spousal support is not an important consideration, other than if there were a spousal support order, [Husband] would be responsible to pay taxes on a spousal support award. [Wife] could deduct that as a tax deduction." The family court's comments reflect it considered the tax factor but did not assign it a great deal of weight given the evidence in this case.

The eleventh factor in section 4320 is "[t]he balance of the hardships to each party." (§ 4320, subd. (k).) The family court did not speak explicitly on the topic of hardships; however, it noted that Wife had a house loan of over $500,000, and that Husband suffered a stroke that Husband believed impaired his ability to obtain employment. The family court's comments reflect it considered the difficulties faced by both parties.

The twelfth factor in section 4320 is "[t]he goal that the supported party shall be self-supporting within a reasonable period of time. Except in the case of a marriage of long duration as described in Section 4336, a 'reasonable period of time' for purposes of this section generally shall be one-half the length of the marriage." (§ 4320, subd. (*l*).)

The family court said, "Again, this is a short-term marriage. It's less than 10 years. It's the goal of the State of California for a person to use reasonable efforts to become self-sufficient and independent of the other individual. The parties now have

been separated for a period of five years—longer than five years, which is longer than half the length of the actual marriage, the nine-year marriage. And, at this point, [Husband] is not employed. However, he is currently and has been for the last four or five years living with [Girlfriend]. He's indicated she makes about $4,000 a month, and he lives there with her."

The family court's comments reflect that it considered the goal that Husband become self-supporting. The family court also considered that the half-length time period of the marriage (four and one-half years) had already been exceeded, in that the parties had been separated for more than five years. The family court's comments reflect the family court considered the twelfth factor and the evidence relevant to that factor.

The thirteenth factor in section 4320 provides, "The criminal conviction of an abusive spouse shall be considered in making a reduction or elimination of a spousal support award in accordance with Section 4324.5 or 4325." (§ 4320, subd. (m).) While the family court discussed Husband's conviction as part of the ninth factor (former § 4320, subd. (i) [eff. Jan. 2016]), it did not state that it was reducing or eliminating spousal support due to Husband's conviction.

The fourteenth factor in section 4320 is "[a]ny other factors the court determines are just and equitable." (§ 4320, subd. (n).) The family court said, "This is such an atypical relationship because of the prison incarceration and the other woman that you're living with." The family court's comments reflect it took into consideration the short amount of time that Husband and Wife spent cohabitating during the marriage.

Thus, the family court considered the fourteenth factor and the evidence relevant to that factor.

In regard to weighing the 14 factors, the family court said, "I look at this to determine whether this spouse has a right to be supported, weighing all of those factors by the other spouse because of what happened during the course of the marriage." The family court's comment reflects the family court understood that it had to weigh the factors in reaching its ruling.

In weighing all the factors, the family court reasoned, "Well, during the course of the marriage, the nine-plus years that I found that the marriage existed, there was only a one-year period of time that there was really—where [Husband] was in [Wife's] care, under [Wife's] roof, and [Wife was] providing for [Husband]. And that was back in 2011. That was six years ago. [¶] Based upon all of those factors . . . there is no basis whatsoever to grant spousal support."

The family court's comments reflect a reasoned weighing of the factors. The family court discussed each factor, and it took the law and evidence into consideration when reaching its result. Because the family court explained its ruling in light of the relevant law and evidence, the family's court's decision was not arbitrary or unreasonable. Therefore, we conclude the family court did not abuse its discretion.

Husband contends the family court abused its discretion because Wife financially supported Husband while he was in prison by sending him care packages, placing money in his prison account, and paying for telephone calls. Husband fails to identify to what factor this argument is relevant. We assume, for the sake of addressing the

issue, that Husband is taking issue with the family court's finding that Wife only financially supported Husband for one year. However, it is unclear what Husband would want the court to do with the fact that Wife financially supported Husband in prison. For example, that fact would not change the finding that Wife stopped supporting Husband in 2012. As another example, Husband likely would not want prison to be the marital standard of living. Accordingly, because it is unclear what legal point Husband is trying to make with the argument that Wife supported him while in prison, we find his argument to be unpersuasive.

Husband contends the family court erred by considering his domestic violence conviction. Contrary to Husband's position, the factors in section 4320 are mandatory. The statute provides, "In ordering spousal support under this part, the court *shall* consider all of the following . . . ." (Italics added.) One of the factors in section 4320 is "[d]ocumented evidence . . . of any history of domestic violence, as defined in Section 6211, between the parties . . . ." (Former § 4320, subd. (i) [eff. Jan. 2016].) Accordingly, the family court was required to consider Husband's domestic violence conviction.

B. COMMUNITY PROPERTY

Husband contends the family court erred by finding all the assets at issue were Wife's separate property.

Husband contends that substantial evidence does not support the family court's finding that the vehicles are Wife's separate property. In particular, Husband asserts the

vehicles were community property because Wife purchased the vehicles with money from a joint checking account that she shared with Husband.

In our reading of the record, it appears the family court was operating under the premise that the money Wife received from the tribe was Wife's separate property. Husband does not contend the family court applied an incorrect law. Rather, Husband contends the money transmuted from separate property to community property when the money was placed in the joint checking account. Because Husband is raising an evidentiary issue, in regard to the law we will assume without deciding, that the money Wife received from the tribe was Wife's separate property. (See *Squirrell v. Queen* (2010) 9 Am. Tribal Law 421, 424-425 [tribal distributions are separate property]; cf. *Zander v. Zander* (Minn. 2006) 720 N.W.2d 360, 369 [tribal distributions are marital property].)

Before proceeding with our substantial evidence analysis, we note that, at one point in Husband's argument, he asserts Wife's tribal distribution was community property because it was income received during the marriage. Husband supports his assertion with a citation to the general rule that property acquired during marriage is community property when the married person is "domiciled in this state." (Fam. Code, § 760.) Husband does not proceed to argue the law after making this assertion. As examples, (1) Husband does not explain if a tribal distribution is more akin to a salary (community property) or an inheritance (separate property); and (2) Husband does not explain if, legally, the Morongo reservation qualifies as being "domiciled in this state" (Fam. Code, § 760) such that the Family Code would apply in this case. (See generally

Mississippi Band of Choctaw Indians v. Holyfield (1989) 490 U.S. 30, 48-49 [domicile was on the Choctaw reservation].) Thus, to the extent Husband intended to assert the family court erred in interpreting the law because tribal distributions are community property, we deem such an assertion to be forfeited by the failure to provide reasoned legal analysis. (*Berger v. Godden* (1985) 163 Cal.App.3d 1113, 1117 [failure to provide meaningful legal analysis forfeits the issue].)

We now turn to the substantial evidence issue raised by Husband—whether Wife transmuted her separate property into community property by placing it in a joint checking account.

"Characterization of property, for the purpose of community property law, refers to the process of classifying property as separate, community, or quasi-community. Characterization must take place in order to determine the rights and liabilities of the parties with respect to a particular asset or obligation and is an integral part of the division of property on marital dissolution." (*In re Marriage of Haines* (1995) 33 Cal.App.4th 277, 291.) Separate property includes all property owned by the person prior to the marriage, gifts, and inheritances. (§ 770.)

"Although the writing need not contain the words 'transmutation,' 'community property' or 'separate property,' there must be language that expressly states the character or ownership of the spouse's interest is being changed." (*Estate of Petersen* (1994) 28 Cal.App.4th 1742, 1749.)

As set forth *ante*, we are assuming without deciding, that the family court was correct in its determination that the tribal distributions were Wife's separate property.

Therefore, Husband needed to prove by a preponderance of the evidence that Wife transmuted the property into community property by placing it in the joint bank account. (See *In re Marriage of Valli* (2014) 58 Cal.4th 1396, 1400 [preponderance of the evidence standard applies].)

"Courts typically apply a substantial evidence standard of review to the court's characterization of property as separate or community." (*In re Marriage of Brandes* (2015) 239 Cal.App.4th 1461, 1472.) However, where the party who had the burden of proof in the family court contends the court erred in making findings against it, "the question for a reviewing court becomes whether the evidence compels a finding in favor of the appellant as a matter of law. [Citations.] Specifically, the question becomes whether the appellant's evidence was (1) 'uncontradicted and unimpeached' and (2) 'of such a character and weight as to leave no room for a judicial determination that it was insufficient to support a finding.' " (*In re I.W.* (2009) 180 Cal.App.4th 1517, 1527-1528.)

Husband does not direct this court toward a writing wherein Wife expressly acknowledged that her tribal distribution funds were changing character from separate property to community property. Rather, Husband asserts Wife transmuted the property by the act of depositing, or having someone else deposit, her money into a joint checking account. Because Husband relies upon an act, rather than an express writing, we are not persuaded that the family court erred in concluding Wife's tribal distribution remained separate property. (See generally *In re Marriage of Valli*, *supra*, 58 Cal.4th at p. 1406 ["the transmutation requirement of an express written declaration applies to

wife's claim"].) Thus, the vehicles were purchased with Wife's separate property and remained Wife's separate property. (*In re Marriage of Mix* (1975) 14 Cal.3d 604, 610 ["Property purchased with the wife's separate property funds is her separate property"].) The family court did not err.

In one portion of Husband's argument, he writes "[Wife] presented no reasonable evidence to show that she had not comingled or transmuted her separate property assets making them community assets." Because Husband mentioned commingling, we will discuss that theory as well. "[T]he mere commingling of separate property and community property funds does not alter the status of the respective property interests, provided that the components of the commingled mass can be adequately traced to their separate property and community property sources." (*In re Marriage of Braud* (1996) 45 Cal.App.4th 797, 822-823.)

Wife added Husband's name to her bank account and made it a joint account (Wife's account). Wife last held a job sometime before 2001. Because Wife was not working, there is nothing indicating that Wife was depositing community property funds into the joint checking account. Therefore, the only money being deposited into Wife's account, from Wife, was Wife's separate property tribal distribution.

Husband testified that he did not deposit any money into the joint account with Wife. After Husband opened his bedsheet business in February 2012, he opened a joint bank account with his brother (brother's account). Husband deposited money from the business into brother's account. As a result, Husband did not deposit community property funds into Wife's account.

Wife's separate property funds from the tribal distribution were not commingled in Wife's account because Wife's separate property was the only money in the account. Therefore, the separate property funds were easily traceable and their status was not altered from separate property to community property. That means the vehicles were purchased with Wife's separate property. As a result, the family court did not err by concluding the vehicles were Wife's separate property. (*In re Marriage of Mix, supra*, 14 Cal.3d at p. 610 ["Property purchased with the wife's separate property funds is her separate property"].) In sum, under a transmutation or commingling theory, the family court did not err.

We now address the issue of the house. The only money Husband contributed toward the house was what appears to have been a gift, prior to the marriage. We see nothing indicating that Husband is asserting a separate property interest in the house prior to the marriage. (See generally *In re Marriage of Rico* (1992) 10 Cal.App.4th 706, 710 ["both parties had a separate property interest in the residence"].) During the marriage, Wife borrowed money solely in her name for the house. The record reflects that when Wife was unable to pay the house loan, while she was incarcerated, the house loan went unpaid. The reasonable inference from that evidence is that Wife was the only person paying the house loan, and she was paying it with her separate property tribal distributions. Therefore, like the vehicles, substantial evidence supports the finding that the house is Wife's separate property. (*In re Marriage of Mix, supra*, 14 Cal.3d at p. 610 ["Property purchased with the wife's separate property funds is her separate property"].)

DISPOSITION

The judgment is affirmed. Appellant is to bear his own costs on appeal.[4] (Cal. Rules of Court, rule 8.278(a)(5).)

NOT TO BE PUBLISHED IN OFFICIAL REPORTS

MILLER
Acting P. J.

We concur:

FIELDS
J.

MENETREZ
J.

[4] Wife has not made an appearance at this court. Therefore, we do not award her costs on appeal. (Cal. Rules of Court, rule 8.278(a)(5).)